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ATTY # U.S. District Eastern

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF ILLINOIS
EASTERN DIVISION

CARL R. MENEFEER, SR.,

Plaintiff,

vs.

CITY OF COUNTRY CLUB HILLS,

Defendant.

No. 08C002948

Judge Leinenweber

Magistrate Judge Valdez

DEFENDANT'S MOTION TO DISMISS

NOW COMES Defendant, CITY OF COUNTRY CLUB HILLS, by and through its attorneys, NORTON, MANCINI & WEILER, and moves this Honorable Court enter an order dismissing Plaintiff's complaint pursuant to Fed. R. Civ. Proc. 12(b)(6), and in support thereof, Plaintiff states as follows:

1. On May 21, 2008, Plaintiff, CARL R. MENEFEER, SR. (hereinafter referred to as "Plaintiff"), filed a complaint at law alleging that Defendant, CITY OF COUNTRY CLUB HILLS, (hereinafter referred to as "Defendant") is liable to Plaintiff for damages resulting from Defendant's disclosure of Plaintiff's criminal history information in violation of 42 U.S.C. 3789g(b). (See Exhibit A).

2. Section 3789g provides:

All criminal history information collected, stored, or disseminated through support under this chapter shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Office of Justice Programs shall assure that the

security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this chapter, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction.

Notably, this section does not on its face establish a cause of action for violation of any of its provisions.

3. Where a federal statute does not provide a remedy for a violation of its provisions, 42 U.S.C. 1983, which establishes a cause of action to remedy the deprivation of rights created by federal law, can be invoked to seek redress for such a violation.

4. Plaintiff's complaint fails to invoke § 1983 and thus fails to state a cause of action upon which relief can be granted.

5. Notwithstanding the facial deficiency of Plaintiff's complaint, the 7th Circuit held in Polchowski v. Gorris, 714 F.2d 749, 751 (7th Cir. 1983), that § 3789g(b) does not create an enforceable right to prevent the disclosure of criminal history information. In that case, the plaintiff filed suit under § 1983 alleging that the Wood River Police Chief violated § 3789g(a) and (b) by publishing certain statistical and criminal history information about him while he was a candidate for city council. Id. at 750. The Court reasoned that because § 3789g(a) imposes an affirmative obligation upon any person possession statistical information, while § 3789g(b) imposes an affirmative obligation only on the Office of Justice Assistance Research and Statistics, § 3789g(a) creates a right, while § 3789g(b) does not. Id. at 751.

6. Under Fed. R. Civ. Proc. 12(b)(6), a complaint may be dismissed for failure to

state a cause of action upon which relief can be granted. Therefore, both 1) Plaintiff's failure to invoke § 1983; and 2) the Polchowski decision dictate that Plaintiff's complaint be dismissed.

WHEREFORE, Defendant, CITY OF COUNTRY CLUB HILLS, prays this Honorable Court enter an order dismissing Plaintiff's complaint with prejudice and whatever other relief this Court deems just and proper.

Respectfully submitted,

NORTON, MANCINI & WEILER

By: /s/ Thomas R. Weiler
Thomas R. Weiler

Thomas R. Weiler
NORTON, MANCINI & WEILER
111 West Washington Street
Suite 835
Chicago, IL 60602-2793
Tel: (312) 807-4999
Atty. No. 06184955

CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that the undersigned, an attorney, hereby certifies that he caused the attached **Motion to Dismiss**, to be served upon counsel of record in the above captioned matter at the addresses listed on this certificate of service by regular U.S. Mail on this **8th** day of **July, 2008**.

Carl R. Menefee, Sr.
3517 Birchwood Drive
Hazel Crest, IL 60429

By: /s/ Thomas R. Weiler

Thomas R. Weiler

NORTON, MANCINI & WEILER
Attorneys for Defendant, CITY OF COUNTRY CLUB HILLS
111 West Washington Street, Suite 835
Chicago, IL 60602-2793
(312) 807-4999
Attorney No. 06184955

Exhibit A

RECEIVED

MAY 21 2008

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Carl R. Menefee, Sr.

Plaintiff,

v.

City of Country Club Hills

Defendant.

08C 2948

JUDGE LEINENWEER

MAGISTRATE JUDGE VALDEZ

COMPLAINT OF JUSTICE SYSTEM IMPROVEMENT ACT

1. This is an action for failure to comply with the Justice System Improvement Act (JSIA).
2. The Plaintiff is Carl R. Menefee, Sr. of the county of Cook in the state of Illinois.
3. The Defendant is City of Country Club Hills, 4200 W. 183rd Street, Country Club Hills, Illinois 60478. Telephone number 708.798.2616.
4. The Plaintiff sought employment at the Defendant's address in August of 2004.
5. The Plaintiff signed the Defendant's consent form on September 29, 2004. "Exhibit A."
6. The Defendant obtained Plaintiff's Federal and State (IL) criminal history information.
7. The City of Zion issued the Defendant a subpoena involving an unrelated administrative proceedings before the Illinois Human Rights Commission on January 8, 2008. "Exhibit B."
8. The Plaintiff obtained evidence that the Defendant produced and provided without consent copies of Plaintiff's criminal history information on May 15, 2008. "Exhibit C."
9. The Defendant is a municipal governmental agency.
10. Jurisdiction over the statutory violation alleged is conferred for the JSIA by 42 U.S.C.~3789g Confidentiality of Information.

11. The facts supporting the Plaintiff's claim of the Defendant's failure to comply with the J.S.I.A. are as follows:

A. ISSUE/BASIS

FAILURE TO COMPLY WITH J.S.I.A. ON OR ABOUT FEBRUARY 20, 2008,
BY PRODUCING AND PROVIDING WITHOUT CONSENT IMMUNE COPIES OF
FEDERAL AND STATE (IL) CRIMINAL HISTORY INFORMATION IN AN
UNRELATED ADMINISTRATIVE PROCEEDING.

B. PRIMA FACIE ALLEGATIONS

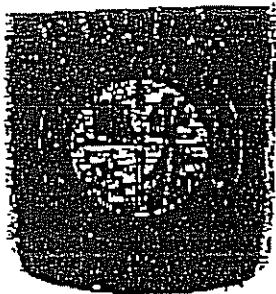
1. Plaintiff gave the Defendant consent to conduct a background check for the Director position on September 29, 2004.
 2. The Defendant obtained Plaintiff's Federal and State (IL) criminal history information to evaluate for the Director position.
 3. On May 15, 2008, Plaintiff received evidence that Defendant produced and provided to the City of Zion without consent copies of his Federal and State (IL) criminal history information.
 4. On February 20, 2008, Defendant conveyed immune criminal information to the ... City of Zion in response to the January 8, 2008, Illinois Human Rights Commission subpoena No. 2897, in the matter of *Menefee v. Zion* 2005CA2865.
 5. The Defendant violates the statute 42 U.S.C.~3789g by producing and providing immune criminal information without consent, information that was obtained for the purpose of employment with the Defendant in August of 2004.
12. The Plaintiff demands a jury trial.

THEREFORE, the Plaintiff prays that if available, grant appropriate injunctive relief, punitive damages, pre and post-judgment interest, court cost, and any such relief as the Court may find appropriate.

Carl R. Menefee, Sr.
Carl R. Menefee, Sr.

05-21-08
Date

3517 Birchwood Drive
Hazel Crest IL 60429
708.335.0238



**COUNTRY CLUB HILLS
POLICE DEPARTMENT
3700 W. 175th PLACE
COUNTRY CLUB HILLS, IL 60478**

Mayor
Dwight W. Welch

Chief of Police
William A. Brown

PH: (708) 798-3191

FAX: (708) 798-1211

AUTHORIZATION TO RELEASE INFORMATION
(Personal Inquiry Waiver)

TO WHOM IT MAY CONCERN:

I respectfully request and authorize you to furnish the Country Club Hills Police Department with any and all information that you may have concerning me, my employment (work) and educational records, my reputation, and my financial and credit status. Please include any and all medical, physical and mental records and reports, including all information of a confidential or privileged nature, and photocopies of same, if possible. Your cooperation in this reply will be used to assist the Department in determining my qualifications and fitness for the position I am seeking with the City of Country Club Hills.

I hereby release you, your organization and others from any liability or damage which may result from furnishing the information requested.

Carl R. Mangione Sr.
Applicant's Signature

09/29/2004
Date

I hereby authorize the release of my Military Service Records (including medical, physical and mental health records and reports) to the Country Club Hills Police Department, Country Club Hills, Illinois.

Date: _____

Signature: _____

Service Number: _____

Subscribed and sworn to before me on this _____ day of _____

Notary Public for State of Illinois _____

Note: A photocopy reproduction of this request shall be, for all intents and purposes, as valid as the original. You may retain this form for your files.



SUBPOENA FOR DOCUMENTS
TO NON-PARTY

No 2897

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION



Carl R. Menefee, Sr.,

v.

City of Zion

CHARGE NO. 2005CA2865

E.E.O.C. NO. 21 BA 51641

ALS NO. 07-457

To: City of Country Club Hills

Attn: City Clerk

4200 W. 183rd Street

Country Club Hills, IL 60478

YOU ARE HEREBY REQUIRED AND DIRECTED TO PRODUCE AND PROVIDE at 415 W. Washington St.,

Suite 202 in the City of Waukegan, Illinois

on the 12th day of February, 20 08 at 9 o'clock a.m.

of that day for the purposes of examination and copying, the following books, payrolls, records, correspondence, documents, papers or other evidence:

SEE ATTACHED RIDER

WITNESS: A Commissioner of the Illinois Human Rights Commission has authorized issuance hereof, this

8th day of January 2008

Atty. No. 0047643
Name Donald W. Anderson
Attorney for City of Zion
Address 415 W. Washington St., Suite 202
City/Zip Waukegan, IL 60085
Telephone 847-244-8682

A handwritten signature in black ink, appearing to be "Donald W. Anderson".

Certified Article Number

7160 3401 9845 3569 0435

SENDER'S RECORD

RETURN OF SERVICE

I hereby certify that, being a person over 18 years of age, I duly served a copy of the within subpoena

☐ in person ☐ by registered mail ☒ by certified mail

☐ by leaving copy at principal office or place of business, to wit: _____

on the person named herein on January 9, 2008
(month, day and year)

(Person making service)

subscribed and sworn before me this 9th day of January, 20 08

Notary public:

A handwritten signature in black ink, appearing to be "Mary Misic".

"OFFICIAL SEAL"

MARY MISIC

Notary Public, State of Illinois

file: Witness
flow: Commission
nk: Serving Party

Ancel Glink

DIAMOND BUSH
DiCIANNI
& KRAFTHEFER

A Professional Corporation
415 Washington Street, Suite 202
Waukegan, IL 60085
www.ancelglink.com

Donald W. Anderson
danderson@ancelglink.com
(P) 847.244.8682, Ext. 239
(F) 847.244.8671

May 12, 2008

By Certified Mail, Return Receipt Requested

Carl R. Menefee, Sr.
3517 Birchwood Drive
Hazel Crest, Illinois 60429

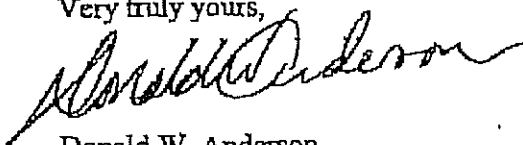
Re: Menefee v. City of Zion
Charge No. 2005CA2865
ALS No. 07-457

Dear Mr. Menefee:

Per your request, enclosed are the following documents:

- 1) A copy of the subpoena served on the City of Country Club Hills;
- 2) A copy of the letter sent to the Human Rights Commission evidencing service of the subpoena;
- 3) A copy of the return receipt evidencing service of the subpoena;
- 4) A copy of the documents received from the City of Country Club Hills pursuant to the subpoena;
- 5) A copy of the FedEx Airbill showing delivery of the documents sent pursuant to the subpoena.

Very truly yours,



Donald W. Anderson

Enclosure

